Michael K. Jeanes, Clerk of Court
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07/17/2017 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-097235 07/14/2017

HONORABLE JOSHUA D. ROGERS

CLERK OF THE COURT
I. Ostrander
Deputy

GREEN BEE PRODUCE.COM L L C JOEL E SANNES

v.

JUSTIN ROY, et al. PATRICK J GEARE

ORAL ARGUMENT

Courtroom 206 SEF

10:03 a.m. This is the time set for oral argument regarding Plaintiff's *Motion for Summary Judgment* electronically filed on March 16, 2017. Plaintiff is represented by counsel Charles W. Brown Jr. Aaron Shearer, a representative of Plaintiff Green Bee Produce.com LLC, is present. Defendants Justin Roy and Barbara Roy are present and are represented by counsel Patrick J. Geare.

A record of the proceedings is made digitally in lieu of a court reporter.

Oral argument is presented.

IT IS ORDERED taking this matter under advisement.

10:29 a.m. Hearing concludes.

LATER:

Pending before the Court is Plaintiffs' *Motion for Summary Judgment.* The Court has considered the Motion, the memoranda submitted in support thereof and opposition thereto, the arguments of counsel, and the relevant law. For the reasons set forth below, the Motion is granted.

"Summary judgment is appropriate only if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law." *Johnson v. Earnhardt's Gilbert Dodge, Inc.*, 212 Ariz. 381, 385, ¶ 15, 132 P.3d 825, 829 (2006) (quoting *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 482, ¶ 14, 38 P.3d 12, 20 (2002)). Thus, a motion for summary judgment should only "be granted if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme Sch. v. Reeve*s, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). The facts "must be viewed in a light most favorable to the party against whom it was directed and … [summary judgment] is inappropriate if there is any doubt as to whether an issue of material fact exists." *Joseph v. Markovitz*, 27 Ariz. App. 122, 125, 551 P.2d 571, 574 (1976).

Viewing the facts in a light most favorable to Defendants, there are no genuine issues of material fact. Defendants provided the Court with insufficient admissible evidence to contest any of the material facts as set forth by Plaintiff. The terms of the agreement, signed by all parties, are specific, comprehensive, and sufficient to satisfy the Statute of Frauds. There is no evidence of fraud, duress, or coercion. All of the evidence confirms that the written agreement at issue is a valid and enforceable contract for the purchase of real estate.

Defendants contend that the agreement is not valid because it was signed on behalf of an administratively dissolved entity, Green Bee Produce, LLC. This is irrelevant, however, because the undisputed evidence is that Plaintiff does business as Green Bee Produce, LLC. Further, using as a tradename the name of an administratively dissolved limited liability company, if it has not applied for reinstatement after six months, is permissible under the relevant statutes. Therefore, the fact that the agreement was signed on behalf of Green Bee Produce, LLC, instead of GREENBEEPRODUCE.COM LLC does not operate to invalidate the contract.

Defendants further contend that the subject agreement is not enforceable because it contemplates the parties signing a more formal agreement later. This fact, however, does not invalidate the contract or otherwise render it unenforceable either. The agreement specifically states that "[t]hese terms are the bases for creation of the real estate purchase contract to be drawn up and reviewed for accuracy by an official party. Until this document is reviewed by an

official party these terms will govern the purchase of 443 South Drew Street." Irrespective of the fact that a more formal real estate purchase contract is contemplated, these terms are clear that the parties had agreed on the purchase of the subject property, that this written agreement set forth the terms of the purchase, and that the terms of this written agreement were controlling of the purchase of the property.

Even if this language could somehow be described as an "agreement to make an agreement", which the Court finds that it does not, it would still be binding and enforceable as an agreement *in praesenti*, as it sets forth with significant specificity all of the essential elements of the purchase agreement, as the parties expressly agreed these were the controlling terms of the purchase agreement. *See Peer v. Hughes*, 25 Ariz. 105, 108, 213 P. 691, 691 (1923); *T. D. Dennis Builder, Inc. v. Goff*, 101 Ariz. 211, 214, 418 P.2d 367, 370 (1966).

Therefore,

IT IS ORDERED granting Plaintiffs' *Motion for Summary Judgment.*